

August 17 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0156

FILED

AUG 17 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

STATE OF MONTANA,

Plaintiff and Appellee,

v.

KAREN DANIEL-KNOLL,

Defendant and Appellant.

O R D E R

The State of Montana has moved to dismiss this appeal on grounds that the notice of appeal was not timely filed. Karen Daniel-Knoll objects to the motion, claiming she placed her notice of appeal in the facility mail at the La Vista Correctional Facility in Pueblo, Colorado, before the time allowed for appeal expired.

Judgment was entered against Daniel-Knoll in the First Judicial District Court on February 24, 2009, following her entry of a guilty plea. In October of 2009, Daniel-Knoll filed a Motion to Correct Illegal Sentence, which the District Court denied on January 26, 2010, reasoning that it had no jurisdiction to address the motion except in the context of a petition for postconviction relief, for which Daniel-Knoll had not met the threshold requirements.

Daniel-Knoll filed her Notice of Appeal on March 29, 2010, stating she was appealing from the January 26, 2010 order. On July 7, 2010, Daniel-Knoll filed her opening brief on appeal, in which brief she challenges the sufficiency of the evidence against her and argues she received ineffective assistance of trial counsel. As the State points out, both of those issues relate to events prior to the February 24, 2009 judgment against her and her entry of a guilty plea -- not to the District Court's denial of her Motion to Correct Illegal Sentence.

A criminal defendant who wishes to appeal her conviction must file a notice of appeal within 60 days after the final judgment of conviction. M. R. App. P. 5(b)(i). In this case, the notice of appeal was filed over a year after the entry of final judgment, and 62 days after the denial of Daniel-Knoll's Motion to Correct Illegal Sentence. Although Daniel-Knoll refers to a "prison delivery rule," under which she apparently feels her notice of appeal was timely, the Montana Rules of Appellate Procedure do not include a "prison delivery rule." We conclude the notice of appeal was untimely. Absent an order granting an out-of-time appeal, the untimely filing of a notice of appeal requires dismissal. *See State v. Clark*, 2008 MT 317, ¶¶ 19-32, 346 Mont. 80, 193 P.3d 934 (Nelson and Morris, JJ, concurring).

THEREFORE,

IT IS ORDERED that the State of Montana's motion to dismiss this appeal is GRANTED.

The Clerk is directed to provide copies of this Order to all counsel of record and to Karen Daniel-Kroll personally.

DATED this 17<sup>th</sup> day of August, 2010.

W. William Byrd

James S. [unclear]  
Michael E. [unclear]

John Rice  
Brian [unclear]

Justices